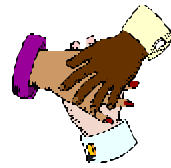




Metropolitan Police Department
Office of Professional Responsibility
Civil Rights & Force Investigation Division
MOA Compliance Monitoring Team



Metropolitan Police Department
and
U. S. Department of Justice

Memorandum of Agreement
Progress Report



OCTOBER 8, 2004

**“Great things are not something accidental, but must certainly be willed.”
-Vincent Van Gogh**

Introduction

In January 1999, Chief of Police Charles Ramsey and District of Columbia Mayor Anthony Williams asked the United States Department of Justice to review the Metropolitan Police Department's (MPD) practices as they related to police use of force. In March 2001, the U.S. Department of Justice (DOJ) concluded its review, and later entered into a Memorandum of Agreement (MOA) with the District of Columbia and the Metropolitan Police Department on June 13, 2001. The Agreement built upon the work MPD started during the course of the review, and provided that an Independent Monitor would evaluate the implementation of the Agreement. When the balance of the reforms contained in the Agreement are implemented, the Metropolitan Police Department will be a model for the nation on how to uphold the rule of law while using force only when and to the extent necessary.

This progress report is the eleventh submitted by the Department's Compliance Monitoring Team (CMT). The Compliance Monitoring Team, part of the MPD's Office of Professional Responsibility (OPR), was created by Chief Ramsey to ensure the timely implementation of and compliance with the Memorandum of Agreement. This quarterly report reflects MPD's Memorandum of Agreement activity from July 1, 2004, through September 30, 2004.

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MPD's quarterly reports are required by Memorandum of Agreement paragraph 175. They have been designed by the MPD to share our MOA-related activities not only with the U.S. Department of Justice and the Office of the Independent Monitor (OIM), but also throughout the Metropolitan Police Department and the citizenry at large. Furthermore, there is an addendum to this quarterly report that lists all of the MOA paragraphs and the status of each item.

Metropolitan Police Department is currently in its fourth year of work on implementing the reforms called for in the Memorandum of Agreement. The fourth and fifth years of the MOA are significant in that MPD's "substantial compliance" with the MOA will be measured during this time. Paragraph 182 of the MOA reads, in part, that,

"The Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have substantially complied with each of the provisions of this Agreement and maintained substantial compliance for at least two years. The burden shall be on the City and MPD to demonstrate that it has substantially complied with each of the provisions of the Agreement and maintained substantial compliance for at least two years..."

The Office of the Independent Monitor is tasked with determining if MPD has substantially complied with the MOA and uses their quarterly reports to provide an analysis of MPD's compliance efforts. As previously reported, the Independent Monitor, MPD, and DOJ have devoted a significant amount of time to further defining the concept of substantial compliance to ensure that there are clearly defined measures for each requirement of the MOA. The parties have agreed to the importance of using both quantitative and qualitative measures for substantial compliance. Specifically, we agreed that for the majority of MOA paragraphs, the objective compliance measurement rate would be 95 percent. However, we also agreed that the OIM may find MPD in substantial compliance with MOA requirements when the objective measurement falls below 95 percent if, in the OIM's judgment, MPD has appropriate systems in place to address those shortfalls, and MPD is using those systems to ensure the accountability of its members and of the Department itself.

The OIM had previously completed a draft compliance document that provides proposed compliance definitions for 126 of the 194 MOA paragraphs.¹ MPD looks forward to the OIM operationalizing these definitions as we move forward with our compliance efforts. A more detailed discussion of the OIM's activities can be found in the *"Independent Monitor"* section of this report.

MPD continues to be pleased with the other progress made by the Department during this reporting period. MPD has continued its important work with the Department of Justice on revisions to the Use of Force Incident Report (UFIR) that is required by MOA paragraph 53. MPD originally proposed revisions to the form in November of 2002. Since that time, MPD and DOJ have been working together to come to an agreement on how best to revise the form. On September 24, 2004 DOJ sent MPD a letter regarding the UFIR, and we are very close to reaching agreement. MPD appreciates DOJ's continued assistance on this matter, and we are confident we can resolve our outstanding issues during the next quarter. A more detailed discussion of the UFIR can be found in the *"Use of Force Incident Report"* section of this report.

MPD also finalized work with the Office of Citizen Complaint Review (OCCR) on the Memorandum of Understanding (MOU) required by MOA paragraph 85. MPD and OCCR signed an MOU in September of 2002. However, both the Department of Justice and

¹ It should be noted that the OIM provided compliance definitions for all of the MOA paragraphs that can be measured. Paragraphs that contained either definitions or background information will not be measured.

the Independent Monitor identified conflicts within the Memorandum of Understanding that did not comport with enumerated requirements in the MOA. Further, many jurisdictional and process disagreements remained between the agencies, despite the signing of the MOU. MPD and OCCR have had extensive discussions and negotiations around the MOU and are pleased to report that it was submitted to DOJ for review and approval on September 24, 2004.

MPD also submitted a number of additional deliverables to DOJ this quarter including a revised *Field Training Officer Protocol*², the revised *Canine Teams General Order*³, and the Department's *Semi-Annual Use of Force Curriculum Review*⁴. In addition to working on deliverables, MPD again focused a great deal of resources on the Personnel Performance Management System (PPMS) during this quarter. The PPMS is a computer system, mandated by the MOA, that will be,

*"a computerized relational database for maintaining, integrating, and retrieving data necessary for supervision and management of MPD and its personnel."*⁵

As previously reported, MPD experienced a significant setback in the area of funding for PPMS and had to temporarily interrupt work with our selected vendor, IBM/CRISNet, on March 31, 2004 due to a lack of funding. Accordingly, since March 2004, MPD has been directing its efforts toward restarting work with IBM/CRISNet and on working with DOJ on negotiating a third modification to the MOA that would provide new deadlines for the development of PPMS. During this reporting period, MPD submitted a revised proposal to DOJ with new PPMS deadlines on September 23, 2004. DOJ sent Chief Ramsey a letter on September 30, 2004 expressing their concerns that MPD and DOJ were unable to complete the MOA modification by the end of the quarter. MPD shares DOJ's concern and is committed to making the modification a top priority in the coming quarter. A more detailed discussion of MPD's PPMS efforts can be found in both the "Timelines" and "Personnel Performance Management System" sections of this report.

The Metropolitan Police Department is proud of its Memorandum of Agreement compliance efforts this quarter, and is confident that MPD is continuing on its way to becoming a model for the nation on how to uphold the rule of law while using force only when and to the extent necessary. MPD recognizes the importance of ensuring substantial compliance with all of the requirements of the MOA, and we will continue to treat our MOA efforts as a priority.

² MOA paragraph 121f

³ MOA paragraph 44-46

⁴ MOA paragraph 119

⁵ MOA paragraph 106

Compliance Monitoring Team

The Compliance Monitoring Team (CMT) was created by Chief Ramsey in February 2002, to ensure the timely implementation of and compliance with the Memorandum of Agreement. The CMT falls under the Civil Rights and Force Investigation Division, located within the Office of Professional Responsibility (OPR). For the past two years, the Office of Professional Responsibility has been headed by Assistant Chief Peter Newsham. However, in July of this year, Chief Ramsey promoted Newsham to be the Assistant Chief in Charge of Regional Operations Command (ROC) North. ROC North is comprised of the Second, Third, and Fourth Police Districts. Assistant Chief Newsham is to be commended for his leadership and support in implementing the various reforms required by the MOA over the last two years.

Also in July, Chief Ramsey promoted Commander William Ponton to the rank of Assistant Chief. Assistant Chief Ponton took command of OPR in July. Ponton joined the MPD in November 1978 and has served in a variety of positions in patrol operations, specialized units and Department administration. Prior to his most recent promotion, Ponton was the Commander serving as Chief of Staff in the Office of the Chief of Police. At Chief Ramsey's request, DOJ and the OIM met with Assistant Chief Newsham, Assistant Chief Ponton and the CMT on August 9, 2004. The meeting was very beneficial for all parties involved and helped to facilitate the transition in command.

The CMT continued its compliance activities during this reporting period, and coordinated a variety of Memorandum of Agreement efforts. During this quarter, members of the Compliance Monitoring Team again worked closely with the Department's PPMS project leaders in preparing a proposed modification to the MOA. The CMT met repeatedly in person and via teleconference with both the Department of Justice and the MPD PPMS Project Management Office to discuss MPD's proposal for the modification.

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The CMT also continued to provide support to various MPD units to assist them in completing MOA deliverables and to facilitate compliance documentation. The CMT worked with the Office of Citizen Complaint Review in finalizing the MPD OCCR Memorandum of Understanding. The MOU incorporated suggestions from DOJ's most recent correspondence and also accommodated a recommendation from DOJ that MPD become more actively involved in assisting OCCR with rescheduling officers that miss their initial OCCR appearance. The CMT also worked with the staff of the Institute of Police Science (IPS) in helping to prepare revised lesson plans as well as enhancements to the July 2004 Semi-Annual Review of MPD's Use of Force Curriculum. The review,

required by MOA paragraph 119, was the subject of discussion between MPD and DOJ. On March 30, 2004, the Department of Justice made several recommendations regarding the reviews, and the CMT assisted the IPS Curriculum Development Specialist (CDS) in responding to DOJ's comments.

The CMT also continued its practice of meeting monthly with the Department of Justice to discuss MOA activities, and also worked very closely with the Independent Monitor to assist their police practice experts in reviewing MPD compliance efforts. In addition, the CMT remains the central repository for MPD's Memorandum of Agreement documents, and has been documenting and transmitting draft policies and other deliverables to DOJ and the Office of the Independent Monitor consistent with MOA paragraph 173. Finally, the Compliance Monitoring Team continues to closely monitor MPD's costs associated with the Office of the Independent Monitor. With the assistance of the D.C. Office of Contracting and Procurement and MPD's Accounts Payable Office, the CMT continues to actively review OIM invoices to control costs and ensure accountability.

General Orders and Policies

Over the course of the Memorandum of Agreement, the U.S. Department of Justice has approved a number of seminal policies related to the Memorandum of Agreement. They include:

- *Use of Force General Order* (MOA Paragraphs 37-40)
- *Use of Force Investigations General Order* (MOA Paragraph 53)
- *Use of Force Incident Report* (MOA Paragraph 53)
- *Handling of Service Weapons General Order* (MOA Paragraphs 41 and 43)
- *Canine Teams General Order* (MOA Paragraphs 45 and 46)
- *Oleoresin Capsicum Spray General Order* (MOA Paragraphs 47-50)
- *Force Investigation Team Organizational Plan and Operations Manual* (MOA Paragraph 57)
- *Force Related Duty Status Determination General Order*
- *Carrying Weapons and Transporting Prisoners Aboard Aircraft General Order*
- *Use of Force Review Board General Order* (MOA Paragraph 67)
- *The Office of Internal Affairs Operational Manual* (MOA Paragraph 72)
- *Serious Misconduct General Order* (MOA Paragraph 72)
- *Community Outreach Program for Filing Citizen Complaints* (MOA Paragraph 91)
- *Specialized Mission Unit General Order* (MOA 150-158)
- *Carrying Service Firearms While Off-Duty in the District of Columbia* (MOA 42) ⁶

⁶ It should be noted that the special order "*Carrying Service Firearms While Off-Duty in the District of Columbia*," which was drafted in order to demonstrate partial compliance with MOA paragraph 42, did not require formal DOJ approval. Accordingly, a copy of the policy was shared with both DOJ and the OIM after it was implemented.

Pending Reengineered Policies

During this reporting period, the Metropolitan Police Department and the U.S. Department of Justice continued to exchange a variety of detailed correspondence concerning numerous draft MPD policies and procedures. They are listed in order of last activity unless otherwise noted. A status matrix containing all of the MOA paragraphs is submitted as an attachment with this report.

On November 27, 2002, MPD submitted a draft plan to limit the number of hours worked by MPD officers in any 24-hour period and in any seven-day period (MOA paragraph 159). Since the submission of the plan, MPD has developed a draft general order, *Limitations on Work Hours*. On September 30, 2003 DOJ requested a status update on progress with that order. MPD submitted a draft general order for DOJ's review and approval on February 23, 2004. DOJ provided comments on the order on June 10, 2004. MPD reviewed DOJ's comments and prepared a response that was submitted to DOJ on June 30, 2004. During this quarter, MPD requested that DOJ expedite their review of the order if possible. The District passed emergency legislation entitled the "Public Congestion and Venue Protection Emergency Act of 2004" and the "Public Congestion and Venue Protection Temporary Act of 2004." As part of that legislation, MPD is required to provide officers to work "reimbursable details" at events and venues that meet certain criteria. Accordingly, MPD hopes to implement the *Limitation on Work Hours General Order* as soon as possible. The general order requires that supervisors track the total number of hours their officers are working and places limitations on the total number of hours an officer may work. By implementing the general order, supervisors will be able to ensure they do not assign officers to work reimbursable details if they are approaching their work hour limit. DOJ was receptive to MPD's request, and we look forward to their comments.

The Metropolitan Police Department submitted a draft *Specialized Mission Units General Order* (MOA paragraphs 150-158) to DOJ on October 4, 2002. DOJ provided comments on the order on January 31, 2003. MPD provided a revised draft of the order on June 30, 2003. DOJ provided comments on the order on August 25, 2003. MPD submitted a revised order, along with a copy of the revised *Specialized Mission Units After Action Report* on December 31, 2003. On March 30, 2004 DOJ provided their final approval for the *Specialized Mission Units General Order*. However, on March 31, 2004, MPD requested a delay in the requirement to implement the *SMU General Order*. According to the first modification to the MOA, MPD agreed to implement all DOJ approved policies within 14 business days of receiving DOJ approval.⁷ MPD wanted to resolve the

⁷ See *Joint Modification No. 1 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department*, September 30, 2002, para graph 6.

outstanding issues regarding the *After Action Report* prior to implementing the *SMU General Order* since the *SMU General Order* contains reference to the *After Action Report* and outlines the process for completing it. Accordingly, to minimize confusion, MPD requested a delay in implementing the *SMU General Order* until 14 business days after DOJ's approval of the *After Action Report*. DOJ granted MPD's request, and MPD prepared a written response to DOJ's March 30, 2004 letter on April 9, 2004. On September 30, 2004, DOJ provided a response to MPD's latest draft of the *After Action Report*. MPD is currently reviewing DOJ's comments.

The Metropolitan Police Department submitted a draft *Enhanced Performance Evaluation System Protocol* (MOA paragraph 118) to DOJ on November 8, 2002. DOJ provided comments on the protocol on May 2, 2003. MPD provided a status report on those comments on September 30, 2003. On October 6, 2003, DOJ provided comments on the status report by email. MPD provided an additional status report on our efforts with the protocol on March 5, 2004. MPD provided a finalized plan to DOJ for review on July 1, 2004. DOJ requested some additional materials to aid in their review on September 24, 2004. MPD provided those materials to DOJ on September 29, 2004. MPD looks forward to receiving DOJ's comments on the plan. A more detailed discussion of the *Enhanced Performance Evaluation System Protocol* is included in the "*Performance Evaluation System*" section of this report.

The Metropolitan Police Department submitted a draft *Enhanced Field Training Officer Program Protocol* (MOA paragraph 121f) to DOJ on December 6, 2002. DOJ provided comments on MPD's protocol on September 30, 2003. MPD experienced delays over the past year in submitting a revised protocol to DOJ. However, MPD finalized their revisions and enhancements to the protocol during this quarter and it was submitted to DOJ on September 27, 2004.

MPD submitted a revised version of its approved *Canine Teams General Order* (MOA paragraphs 45 and 46) to DOJ for review on June 4, 2003. DOJ provided comments on that order on July 25, 2003. In their July 25, 2003 letter, DOJ also promised to provide policy revisions they believed to be consistent with the Memorandum of Agreement requirements and the parties' previous agreements. On September 30, 2003, DOJ provided the policy recommendations to guide MPD's further revisions of the *Canine Teams General Order*. On December 31, 2003 MPD provided a revised general order to DOJ along with a detailed response to all of DOJ's recommended policy revisions. On March 31, 2004, DOJ provided additional comments on the revised general order. MPD provided a revised version of the order to DOJ that attempted to address all of their remaining concerns on June 26, 2004. On September 17, 2004 the Department of Justice emailed MPD with two final requests for the general order. MPD accommodated DOJ's requests and submitted the order to DOJ for final approval on September 24, 2004.

The Metropolitan Police Department submitted a draft *Chain of Command Misconduct Investigations Manual* (MOA paragraph 83) to DOJ on October 25, 2002. DOJ provided comments on the Manual on March 26, 2003. Part of the requirement of MOA Paragraph 83 is that MPD develop a template to assist investigators with completing their misconduct investigations. Through the PPMS development process, MPD realized that the template should be included in the PPMS system to ensure that consistent, comprehensive information is collected regarding misconduct investigations. However, in order to accomplish this, IBM/CRISNet requested the completed template by January 12, 2004 to ensure that it was included in the design of the system. The template was submitted to DOJ for review on December 30, 2003. DOJ provided their approval "preliminarily," subject to MPD's completion of the several suggested changes, on January 7, 2004. MPD forwarded the revised, final template to DOJ and to IBM/CRISNet on January 12, 2004. MPD also finalized revisions to the *Chain of Command Investigations Manual* (MOA paragraph 83), and forwarded the manual to DOJ for review on February 26, 2004. Subsequent to the submission of the manual and template, MPD received the April 9, 2004 *Technical Assistance Related to MPD's Chain of Command Investigations* report prepared by the Independent Monitor. In part, the report contained recommendations specific to the way MPD conducted its misconduct investigations. Accordingly, MPD revised the template to accommodate many of the OIM's recommendations. MPD notified DOJ of these changes to the misconduct investigation template and submitted it along with a newly created "preliminary" misconduct investigation template to DOJ for review on June 7, 2004. Most recently, DOJ provided comments on the Chain of Command Investigations Manual on June 29, 2004 and provided comments on the misconduct investigation templates on September 24, 2004. MPD is currently reviewing both sets of comments.

A draft *Disciplinary Process General Order* (MOA paragraph 105) was submitted to DOJ for review on May 19, 2003. It is noted that the draft policy was due to DOJ during the renegotiated period of the week of November 17, 2002. However, as previously reported, MPD shared a draft of the order with the Fraternal Order of Police for comment. Prior to November 17, 2002, the FOP indicated that they had concerns with aspects of the draft order. MPD notified DOJ of those concerns and chose to delay the submission of the draft order to address the FOP's concerns. DOJ provided comments on the May 19 draft order on August 25, 2003. MPD worked on revising the order earlier this year in consultation with the FOP. However, the revision process coincided with ongoing negotiations between the FOP and MPD regarding compensation and working conditions. Article 12 of the Collective Bargaining Agreement, which specifically relates to disciplinary procedures, is currently one of the items being negotiated. Accordingly, any proposed changes to disciplinary procedures must be addressed formally at the bargaining table. MPD notified DOJ on July 29, 2004 that the *Disciplinary Process General Order* cannot be finalized by MPD until those negotiations are complete. A copy of that letter is included in the Appendix of this report.

The Metropolitan Police Department submitted a draft *Chain of Command Misconduct Investigations General Order* (MOA paragraph 83) to DOJ on November 1, 2002. DOJ provided comments on the order on January 31, 2003. MPD provided an update on the general order to DOJ on December 31, 2003 and provided a revised version of the general order to DOJ for review on February 26, 2004. DOJ provided comments on the order on June 29, 2004. MPD is currently reviewing those comments.

The Metropolitan Police Department submitted a draft *Citizen Complaint General Order* (MOA paragraph 94) to DOJ on October 4, 2002. DOJ replied with detailed comments on November 25, 2002. MPD forwarded the draft to the Office of Citizen Complaint Review on December 27, 2002. The Office of Citizen Complaint Review provided their comments to MPD on January 17, 2003. After completion of the draft MPD OCCR Memorandum of Understanding on October 7, 2003, MPD incorporated relevant portions of the MOU into the general order and shared a revised draft of the order with OCCR on December 8, 2003. OCCR provided comments on December 10, 2003. On March 31, 2004 MPD notified DOJ that we had become aware that the Fraternal Order of Police (FOP) had raised concerns regarding OCCR and that those concerns impacted their ability to comment on the general order. On April 30, 2004, the FOP received further clarification from OCCR regarding their policies in dealing with MPD officers, and the FOP provided their comments on the order to MPD on June 29, 2004. MPD is continuing work on finalizing the order.

The Metropolitan Police Department submitted a draft *Canine Operations Manual* (MOA paragraph 147) to DOJ on November 27, 2002. DOJ provided comments on the manual on September 30, 2003. In their comments, DOJ stated that, "The materials which MPD submitted will likely need to be substantially revised and expanded upon once DOJ and MPD reach agreement about how this methodology is going to be implemented at MPD in compliance with the MOA." MPD has delayed making revisions to the Manual while MPD and DOJ have been revising the *Canine Teams General Order*. Given the finalization of the general order at the end of this quarter, MPD hopes to receive final approval from DOJ on the order shortly, and will revise the manual accordingly.

Timelines

As previously reported, MPD and DOJ renegotiated a number of outstanding MOA deadlines in September 2002 and agreed to a modification of the MOA.⁸ The timeline issues excluded from the first modification were the dates that applied to the Personnel Performance Management System. On September 30, 2003, a second modification to the MOA was signed to renegotiate the outstanding deadlines surrounding PPMS-related

⁸ See "Joint Modification No. 1 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Police Department, September 30, 2002."

deliverables of the MOA.⁹ However, as discussed above, MPD's PPMS efforts have been interrupted due to funding issues. As previously reported, MPD notified the Department of Justice on March 8, 2004 that while MPD had made material progress with the PPMS program, existing funding for the program would be exhausted by the end of March 2004. Accordingly, MPD discontinued its work with the selected PPMS vendor and began to aggressively pursue the identification of necessary funding.

Memorandum of Agreement paragraph 114d requires that MPD have a beta-version of PPMS available for DOJ and OIM testing. MOA paragraph 111 requires that MPD submit the "final" PPMS protocol to the Department of Justice for review. Based on the September 30, 2003 modification to the MOA, both of these items had a deadline of June 25, 2004. Unfortunately, MPD realized it would be unable to meet these deadlines based on the PPMS funding setbacks. Accordingly, on June 14, 2004, MPD formally notified DOJ that we would be unable to meet these deadlines and requested a third modification to the MOA. On June 18, 2004 we provided a proposed development schedule to further outline our proposal for the modification. In addition to the proposed development schedule, MPD also provided a listing of assumptions that guided the development of the revised project schedule.

The Metropolitan Police Department and the Department of Justice worked together this quarter in hopes of finalizing a third modification to the MOA based on MPD's June 18, 2004 proposal. Regrettably, MPD and DOJ were not able to finalize the modification by the end of the quarter. However, both agencies met and exchanged a variety of information during this quarter. A summary of the exchanges can be found in Table 1 below.

Table 1: MOA Modification 3, Summary of Activities	
June 18, 2004	MPD submits proposed revised deadlines for an MOA Modification for the development of PPMS.
July 26, 2004	DOJ emails MPD questions regarding MPD's June 18, 2004 proposal.
July 30, 2004	MPD responds to DOJ's July 26, 2004 email.
August 12, 2004	DOJ emails additional questions regarding MPD's June 18, 2004 proposal.
August 19, 2004	MPD responds to DOJ's August 12, 2004 email.
August 19, 2004	DOJ and the CMT discuss the inclusion of "interim dates" and "non-technical" definitions of Phase I and Phase II PPMS development at the August CMT and DOJ monthly meeting.
September 7, 2004	At the September OIM Meeting, DOJ requests "interim dates" and "definitions" from MPD. MPD requests a meeting with DOJ prior to submitting definitions and interim dates.

⁹ See "Joint Modification No. 2 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Police Department, September 30, 2003."

Table 1: MOA Modification 3, Summary of Activities	
September 16, 2004	DOJ and MPD meet; DOJ requests "interim dates," "definitions" and other items by September 22, 2004.
September 22, 2004	MPD requests, and receives, a one-day extension for submission of materials.
September 23, 2004	MPD submits requested materials to DOJ for review.

MPD looks forward to DOJ's comments on our most recent submission. A copy of the September 23, 2004 submission is included in the Appendix of this report. We are hopeful that we will be able to agree to a modification of the MOA during the next quarter that will accommodate the delays experienced in the development of PPMS. On September 30, 2004 DOJ sent a letter to Chief Ramsey expressing their concern that a modification was not able to be completed during this quarter. MPD shares that concern and remains committed to fulfilling our PPMS obligations. A more detailed report of the status of the PPMS project is included later in this report.

Use of Force Incident Report

As previously reported, the development and implementation of the *Use of Force Incident Report* (UFIR) raised numerous issues for the Metropolitan Police Department. The UFIR form also raised a number of concerns among the Fraternal Order of Police and the rank and file. Based on these concerns, MPD has continued to work toward revising the UFIR to make it more user-friendly. MPD had obtained feedback from officers that the form, particularly the layout, was complicated and confusing. MPD believed that such confusion contributed to officer frustration with the UFIR.

As a result, MPD updated and reformatted the UFIR form, and submitted the proposed revisions, along with a detailed explanation for each proposed change, to DOJ on November 20, 2002. On March 19, 2003 DOJ provided detailed written feedback on the proposed form. MPD agreed to DOJ's recommendations regarding the UFIR, and submitted a revised UFIR that incorporated all of DOJ's suggestions on December 10, 2003. DOJ provided a response highlighting their remaining concerns on February 27, 2004. On April 9, 2004, MPD submitted a written response to DOJ's February 27, 2004 letter. Over the past few months, MPD and DOJ held a series of meetings and discussions to attempt to resolve the remaining outstanding issues surrounding the revised UFIR. Among the remaining issues being discussed was the most appropriate reporting and tracking mechanism when an officer is in "receipt of an allegation of excessive use of force."¹⁰ Specifically, MPD is concerned with the potential situation where officers would be required to complete a UFIR when they have not used any force. DOJ has been very receptive to working with MPD on this issue, and we

¹⁰ MOA Paragraph 53.

appreciate their continued efforts. On September 24, 2004, DOJ provided a written response to MPD's April 9, 2004 submission. MPD is currently reviewing that submission, but both agencies agree that we are very close to coming to final agreement on this issue. We appreciate DOJ's continued willingness to work with us on this issue. Upon DOJ's final approval of the revised UFIR, MPD will implement the revised form and post an electronic version on the Department's Intranet. MPD is confident that, when approved, the revised form will be a significant improvement over the existing UFIR.

Pointing of a Weapon at or in the Direction of a Person

In the December 10, 2003 letter to DOJ concerning revisions to the UFIR, MPD also discussed the requirements of MOA Paragraph 53. Paragraph 53 states that MPD's use of force policy shall,

"...require officers to complete a Use of Force Incident Report immediately following the drawing of and pointing of a firearm at, or in the direction of, another person..."

Based on MPD's experience with this requirement over the course of the MOA, and based on concerns raised by the Fraternal Order of Police, MPD proposed revisiting this requirement and modifying the MOA.

MPD agrees that tracking the pointing of a weapon at or in the direction of a person is important. However, MPD proposed that this information need not be tracked on a *Use of Force Incident Form* per se. The MOA does not include the pointing of a weapon in its definition of use of force¹¹, and MPD considers the pointing of a weapon to be a reportable action. MPD is also very mindful of the concerns of the Fraternal Order of Police. The FOP has repeatedly raised concerns that capturing a "pointing" incident on a UFIR, but not classifying it as a use of force, can be viewed as somewhat misleading.

Accordingly, MPD developed a draft *Reportable Incident Form* (RIF). The new form provides a mechanism for tracking "pointing" incidents without associating them with a use of force. Members would complete this form anytime they draw and point their weapons at or in the direction of another person. MPD included the proposed *Reportable Incident Form* with its December 10, 2003 UFIR submission to DOJ. DOJ provided a response on February 27, 2004. In their response DOJ indicated they were close to providing approval for the *Reportable Incident Form* based on MPD's response to several procedural concerns including providing assurances that the forms would receive appropriate supervisory review. MPD provided a response to DOJ on April 9, 2004. Specifically, MPD submitted a draft Teletype to DOJ for review that ensures that the *Reportable Incident Forms* receive appropriate supervisory review, comparable to

¹¹ MOA Paragraph 35.

the review done for completed UFIRs. DOJ provided a response to MPD's submission on September 24, 2004. In their letter, DOJ has proposed two final, minor modifications to the RIF. MPD hopes to reply to DOJ on this issue early during the next reporting period.

Specialized Mission Unit After-Action Report

Finally, as previously reported, MPD sought to amend the reporting requirements for the UFIR form as it relates to select MPD Specialized Mission Units for incidents when multiple members of those units point their service weapon under specific enumerated circumstances. A Specialized Mission Unit is defined in the MOA as a group of officers who "engage in significant patrol-related activities on a routine basis including contacts, stops, frisks, and searches."¹² Examples of Specialized Mission Units within MPD are the Emergency Response Team (ERT) and the Warrant Squad. MPD is concerned about delays in operational efficiency when numerous SMU members are engaged in a specific activity where it is expected that most, if not all, members would be pointing their weapons (such as in a high risk warrant situation).

In a letter sent to DOJ on March 5, 2003, MPD proposed that members involved in such an incident would be exempt from having each member complete a UFIR. Instead, a unit manager would complete a *Specialized Mission Unit After-Action Report*.¹³ DOJ provided a response to this request on August 25, 2003. In their response, DOJ recommended some revisions to the proposed form as well as revisions to the draft *Specialized Mission Unit General Order*.

On December 31, 2003 MPD provided a revised *Specialized Mission Unit After-Action Report* along with a revised *Specialized Mission Unit General Order* that incorporated the policies and procedures for the *After-Action Report*. MPD has developed the following specific criteria for when a "pointing" incident can be recorded on a *Specialized Mission Unit After-Action Report*:

- The Specialized Mission Unit (SMU) is a permanent, established unit meeting the requirements established in SMU General Order.
- The SMU is operating as a team at the time of the incident.
- The SMU is led by a clearly identified police manager during the incident (a lieutenant or above.)

¹² MOA Paragraph 149

¹³ This form was previously called the *Specialized Mission Unit Force Incident Report* or SMUFIR

- The SMU is on a pre-planned operation with a clear mission (e.g. execution of a high risk warrant).
- Members are working in unison.

MPD's goal with the *After-Action Report* is still to capture all pertinent information from the UFIR and the proposed *MPD Reportable Incident Form*, but to do it in a single format (one after-action report completed by a manager rather than 15 individual, nearly identical reports). MPD feels that the revised *SMU General Order*, combined with the revised *After-Action Report* will accomplish this goal while meeting the spirit of the MOA.

DOJ provided comments on both the Specialized Mission Unit General Order and the *After-Action Report* on March 30, 2004. In their response DOJ provided final approval on the *Specialized Mission Unit General Order* and outlined their remaining concerns regarding the *After-Action Report*. However, on March 31, 2004 MPD requested that DOJ grant an extension for the 14-business day implementation requirement for approved policies while MPD and DOJ resolve the remaining issues with the *After-Action Report*.¹⁴ DOJ granted MPD's request, and MPD submitted a written response to DOJ's March 30, 2004 letter on April 9, 2004. DOJ provided their final concerns regarding the *After-Action Report* on September 24, 2004. While there is still some further discussion that needs to take place, we are hopeful we can resolve the outstanding issues with all three forms during the next quarter.

Communications & Community Outreach

On July 26, 2002, the Metropolitan Police Department's Office of Corporate Communications submitted a communications plan to DOJ regarding the Memorandum of Agreement. However, subsequent to that date, new outreach deliverable timelines were agreed upon. A revised communications plan reflecting the new outreach dates was completed and submitted to DOJ on November 1, 2002. DOJ provided their approval of the plan on January 31, 2003.

¹⁴ See *Joint Modification No. 1 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department*, September 30, 2002, paragraph 6.

The Metropolitan Police Department Office of Corporate Communications has been the primary generator of MOA-related communications materials and activities. The Command Staff of MPD and the Compliance Monitoring Team have also played an active role in MOA communications activities. The *Citizen Complaints and Use of Force* section on the MPD website, launched in 2002, continues to be a source for providing information to the public regarding MPD's efforts.¹⁵ Copies of all of MPD Memorandum of Agreement progress reports are posted on the website.¹⁶



MPD Civil Rights and Force Investigation Division Homepage

MPD also continues to embrace the concept of multiple conduits for citizens to file citizen complaints. In addition to traditional complaint reporting methods, citizens can call a toll free telephone number (800-298-4006), email complaints to citizen.complaints@dc.gov, fax complaints to (202 727-5116); and hearing impaired stakeholders can file complaints via TDD at 202-898-1454.¹⁷ Detailed, specific information on how to file a citizen complaint with MPD as well as a link to the Office of Citizen Complaint Review are also available on the MPD website.

The MOA also requires both the City and MPD to develop promotional materials regarding the citizen complaint process. Specifically, MOA paragraph 89 requires that,

“Within 120 days of the effective date of this agreement, the City shall make complaint forms, and informational materials available at OCCR, MPD headquarters, all MPD District stations and sub-stations, libraries, the internet, and, upon request, to community groups and community centers. At each MPD District station and sub-station, MPD shall permanently post a placard describing the complaint process and include the phone number of MPD's Office of Professional Responsibility.”

On September 8, 2004 MPD notified both the Department of Justice and the Independent Monitor that our email address for citizen complaints had changed and

¹⁵ http://www.mpd.cdc.gov/serv/citizencomplaints/file_complaint.shtm

¹⁶ Quarterly Force Statistics and MPD MOA Progress Reports can be found online at:
http://mpdc.dc.gov/serv/citizencomplaints/crfid_reports.shtm

¹⁷ MOA paragraph 92.

that we were planning to update our citizen complaint promotional materials. MPD's new email address for receiving citizen complaints, as noted above, is citizen.complaints@dc.gov.

We are currently working to revise our promotional materials to reflect this change. MPD's website has already been updated with the new email address. MPD will also be using this opportunity to replace references in our materials to the "Office of Citizen Complaint Review" with "Office of Police Complaints." The Office of Citizen Complaint Review's name will be officially changed to the Office of Police Complaints later this year.

Office of Citizen Complaint Review

In the District of Columbia, the investigation of citizen complaints against MPD police officers involves both the Metropolitan Police Department and the Office of Citizen Complaint Review. The District government enacted a law in 1999 establishing the Office of Citizen Complaint Review and the governing Citizen Complaint Review Board (CCRB). The mission of OCCR is to investigate, settle and adjudicate complaints of misconduct filed by the public against officers of the Metropolitan Police Department in an independent, fair and timely manner.

A Memorandum of Understanding was signed by representatives of both MPD and OCCR on September 28, 2002. The MOU was drafted, pursuant to MOA paragraph 85, to address information sharing between the two agencies, training for OCCR investigators, complaint intake and referral, witness interviews, and other items. MOA Paragraph 85 requires that, in part,

"...the City and MPD shall develop a written plan, in timely consultation with DOJ, that clearly delineates the roles and responsibilities of OCCR and MPD regarding the receipt, investigation, and review of complaints. At minimum, the plan shall specify each agency's responsibility for receiving, recording, investigating, and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; how, when, and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints; and the role and responsibilities of MPD official serving on the Citizen Complaint Review Board (CCRB)."

As previously noted, the Department of Justice and the Independent Monitor identified conflicts within the Memorandum of Understanding that did not comport with enumerated requirements in the MOA. Further, many jurisdictional and process disagreements remained between the agencies, despite the signing of the MOU.

Over the course of the last two years, representatives from each agency have met to discuss revisions to the Memorandum of Understanding and to discuss outstanding issues. The meetings were very productive, and both agencies were able to agree to a number of revisions to the MOU, including in the areas of information exchange and training for OCCR investigators. Accordingly, MPD and OCCR submitted a revised MOU to DOJ on October 7, 2003. However, it was noted that one outstanding issue remained between the two agencies; MPD and OCCR were continuing discussions regarding the duties of the MPD member that serves on the Citizen Complaint Review Board, specifically the guidelines and procedures for when it would be appropriate for the MPD member of the CCRB to recuse him or herself from Board proceedings.

On May 3, 2004, MPD and OCCR notified DOJ that the Citizen Complaint Review Board had approved the re-drafting of the "MPD member recusal" section of the MOU, and therefore, all remaining issues with the MOU had been resolved. DOJ provided their comments on the MOU on May 25, 2004.

During the past quarter, DOJ requested that MPD and OCCR consider a final addition to the MOU before submitting it. The MOU provides for OCCR to use MPD's Court Automated Notification System (CANS) to schedule officer appearances at OCCR. Scheduling officers via CANS is a two-week process. Accordingly, if an officer misses an appearance, there can be a significant delay in interviewing the officer while OCCR makes another CANS request. DOJ requested that MPD take a more active role in assisting OCCR with rescheduling officers who fail to attend scheduled OCCR proceedings. MPD reviewed this request and agreed to include appropriate language in the MOU. The final draft of the MOU was submitted to the Department of Justice for review on September 24, 2004. MPD thanks the OCCR for their commitment and hard work over the past two years in revising this important document. A copy of the MOU submitted to the Department of Justice is included in the Appendix of this report.

One of the requirements of the MOU with the Office of Citizen Complaint Review is that MPD provide training to OCCR investigators in MPD policies and procedures. MPD's Institute of Police Science (IPS) has worked with OCCR this year in developing training to meet OCCR's needs. In late July, OCCR completed its second three-day block of training provided by IPS staff. The training topics that were covered included D.C. Municipal Regulations and MPD's policies regarding contacts, stops, and frisks, establishing probable cause, making arrests, searches and seizures, citation release, and the handling of juveniles. OCCR commented very favorably on both the content of the training and the IPS instructors.

MPD is very pleased with our relationship with OCCR. MPD has included information and links to the OCCR on its website, and has included information about the OCCR in its printed materials. We feel the increased communication between the two agencies

as well as our efforts in the areas of training OCCR investigators and revising the Memorandum of Understanding have led to a very positive working relationship.

Investigations

Use of force and police officer misconduct investigations fall under the purview of the MPD's Office of Professional Responsibility. OPR determines which MPD unit will be responsible for the investigation of specific use of force and misconduct incidents. Within OPR, there are two primary organizational elements that conduct investigations: the Force Investigation Team and the Office of Internal Affairs (OIA). MOA paragraph 61 requires that the Force Investigation Team investigate serious use of force incidents¹⁸ as well as use of force incidents indicating potential criminal conduct.¹⁹ Other use of force incidents are investigated by the member's chain of command officials and are referred to as "chain of command use of force investigations."

The Office of Internal Affairs is responsible for investigating allegations of "serious misconduct" as defined in MOA paragraphs 72 and 73. Other allegations of misconduct are investigated by the member's chain of command officials and are referred to as "chain of command misconduct investigations."

Investigation Templates

As previously reported, Chief Ramsey requested that the Independent Monitor provide recommendations regarding improvements that could be made to MPD misconduct and non-FIT use of force investigations. The OIM promptly responded to this request, and submitted a report entitled *"Technical Assistance Related to MPD's Chain of Command Investigations"* on April 9, 2004.

In response to the report, the Office of Professional Responsibility, lead by the Compliance Monitoring Team, developed and/or enhanced several documents in order to address some of the issues that were identified. Although most of the documents are not formally required by the Memorandum of Agreement, MPD felt it was important to develop these policies and documents to help assist chain of command investigators and to improve the quality of our use of force and misconduct investigations.

¹⁸ MOA Paragraph 33 defines serious use of force as, "lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine."

¹⁹ MOA Paragraph 35 states, "The term 'use of force indicating potential criminal conduct by an officer' shall include all strikes, blows, kicks or other similar uses of force against a handcuffed subject."

MPD found that many of the OIM's recommendations could be addressed through the creation and/or modification of Chain of Command Investigation Templates. Specifically, the following templates were used to address the OIM's recommendation:

- Use of Force Preliminary Investigation Template
- Use of Force Final Investigation Template
- Misconduct Preliminary Investigation Template
- Misconduct Final Investigation Template

The templates were distributed to the Department in May. All Department supervisors are required to use these templates for their investigations. In addition, the four templates were provided to the OIM and DOJ on June 7, 2004 for comment. The Department of Justice provided comments on the templates on September 24, 2004. MPD has found that the use of these templates has helped to ensure that supervisors include MOA-required information when they complete their investigations. MPD is currently reviewing DOJ's comments on the templates.

Civil Suits

The MOA requires that MPD track civil suits against members. Specifically, MOA paragraph 75 requires that,

"The Corporation Counsel's Office shall notify OPR whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD."

The OIM has previously expressed concern that a notification policy had not yet been formally established. In their most recent Quarterly report, the OIM said, "We reiterate our recommendation that the OCC and MPD resolve any outstanding issues regarding the creation and implementation of a mutually acceptable notification policy as soon as possible."²⁰

(It should be noted that on May 26, 2004, Mayor Williams signed an order renaming the "Office of the Corporation Counsel for the District of Columbia" to the "Office of the Attorney General (OAG) for the District of Columbia.")

During this quarter, the MPD Compliance Monitoring Team (CMT) coordinated with members of the Metropolitan Police Department's (MPD) Office of the General Counsel

²⁰ Ninth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department, July 28, 2004, p.39

(OGC) and MPD's Office of Risk Management to discuss how best to move forward with the implementation of this MOA requirement. Part of our efforts involved discussing how claims against MPD employees are handled by the City. In most cases, when a person intends to initiate a civil action against the City based on the actions of an MPD employee, he or she must first file a claim. These claims were previously filed with the Office of the Corporation Counsel (now Office of the Attorney General). However, earlier this year, the responsibility for processing and investigating these claims was transferred to the District of Columbia Office of Risk Management (DCORM).

It is important to note that DCORM has the authority to settle actions at the claim level without notifying the OAG. Accordingly, the OAG only becomes aware of claims when they result in a lawsuit. However, there are also occasions when a civil lawsuit is initiated against an MPD employee without a "claim " being filed at DCORM. In those instances, only the OAG would be aware of the lawsuit, not DCORM.

Therefore, in order to ensure that MPD is notified regarding all claims and civil lawsuits against its employees, MPD prepared a formal, written request to both the OAG and DCORM that requested monthly reports from both offices regarding any claims or civil lawsuits filed against MPD employees for misconduct. While we realize this will likely result in DCORM and the OAG providing some duplicative information, MPD feels this is the only way to ensure that we receive notifications regarding all claims and civil lawsuits against our employees. A copy of the letter sent to the OAG and DCORM is included in the Appendix of this report.

Use of Force

Chief of Police Charles Ramsey established the Force Investigation Team in January 1999. The Force Investigation Team has evolved into the new national model for police use of force investigations. The team, which took a business-related perspective to force investigations, has been recognized internationally for its high-quality investigations and unique approach to use of force issues.

Previously, investigative protocols were established to comply with the requirements of the Memorandum of Agreement in the form of the *Force Investigation Team Organizational Plan and Operations Manual*. A copy of the revised manual reflecting these protocols was originally submitted to the Department of Justice on February 5, 2002, and to the Independent Monitor on April 8, 2002. After a series of comments and revisions, MPD was pleased to receive DOJ's approval for this important document on December 31, 2003. FIT implemented the manual on January 29, 2004. FIT has worked very hard to provide a comprehensive operations manual that reflects the

provisions of the MOA, and they feel that the DOJ-approved manual has been an invaluable resource for their investigators.

On August 31 2004, DOJ provided a response to FIT's June 30, 2004 update regarding the training for FIT investigators. The report asked for some additional information regarding how FIT investigators are trained. MPD is currently working on a response to DOJ's most recent comments.

The OIM has also continued to submit favorable reports regarding the Force Investigation Team and their investigations. In their most recent quarterly report, the OIM said,

*"This quarter, we continued our review of all preliminary and final use of force investigation reports prepared by FIT I since January 1, 2003. Again this quarter, we found the investigations performed by FIT to be timely, complete, and sufficient."*²¹

The OIM has continued to submit very favorable reports regarding the Force Investigation Team and their investigations.

FIT is committed to ensuring it maintains a high level of quality in its use of force investigations and will continue to comply with all of the requirements of the MOA.

Office of Internal Affairs

MPD's Office of Internal Affairs continued to be a primary hub of MOA compliance efforts. As previously reported, MPD implemented the *Serious Misconduct Investigations General Order* on January 16, 2004 of this year. The *Serious Misconduct Investigations General Order* serves as the basis for outlining OIA's investigative responsibilities with regards to MOA requirements. The MOA specifies the types of alleged misconduct that must be investigated by the Office of Internal Affairs. MPD has defined these types of misconduct as "serious misconduct."

During this quarter, the Office of the Independent Monitor continued its practice of reviewing FIT, OIA, and chain of command investigative reports. During this quarter, the OIM reviewed a random selection of 80 misconduct and non-FIT use of force investigations.²² The investigations are reviewed for compliance with the MOA by the OIM's police practice experts. The selected sample consisted of investigations randomly selected from each of the seven police districts and other MPD assignments. The OIM and MPD worked together this quarter to provide the police practice experts with copies

²¹ *Ninth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department*, July 28,, 2004, p.26.

²² MPD and the OIM had previously clarified that FIT and OCCR investigations would not be considered part of the sample.

of the selected cases. The OIM again devoted a significant amount of time this quarter to reviewing the selected sample. MPD looks forward to receiving feedback from the OIM on their review.

In the OIM's most recent quarterly report, the Monitor reported that they had been contacted by investigators from the Office of Internal Affairs to express concerns related to their periodic redeployment to patrol in connection with MPD's anti-crime initiatives. The OIM reported that among the concerns raised by the investigators was their concern:

“(1) that the one-week redeployment of OIA investigators every six weeks hampers the investigators’ ability to complete timely investigations within the 90-day period prescribed by the MOA and (2) that the redeployment of OIA investigators to the districts creates the potential for “conflicts of interests” to arise because OIA investigators may be redeployed to serve with or be supervised by subjects of misconduct investigations being performed by the OIA.”²³

In addition to contacting the OIM, OIA investigators also raised their concerns with Chief Ramsey and contacted Councilmember Patterson of the District of Columbia City Council. Based on these discussions and on the concerns raised by OIA investigators, Chief Ramsey exempted OIA investigators from field redeployment effective August 29, 2004.

MPD's Office of Professional Responsibility is committed to implementing the remaining reforms contained in the MOA and looks forward to continuing its work with the Office of the Independent Monitor and with DOJ.

Police Canine Teams

On May 4, 2000 the Metropolitan Police Department implemented an interim canine policy and began the initiation of significant improvements in our canine operations. The Department of Justice acknowledged these improvements in paragraph 44 of the Memorandum of Agreement. Paragraph 44 reads,

“DOJ acknowledges that MPD has implemented an interim canine policy via teletype and has initiated significant improvements in its canine operations, including the introduction of a new handler-controlled alert curriculum and the use of new canines.”

²³ *Ninth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department*, July 28, 2004, p.35

After the signing of the MOA, MPD worked on developing a revised *Canine Teams General Order* that incorporated relevant MOA requirements. DOJ approved MPD's *Canine Teams General Order*, and that policy was implemented in October 2002.

MPD has been pleased with the progress of the implementation of the *Canine Teams General Order*, and is extremely satisfied with the creation of the new *Canine Operations Manual*. However, as previously reported, the Office of Professional Responsibility conducted an assessment of MPD police canine incidents last year that had occurred since the institution of the second Force Investigation Team in January 2002. While the overwhelming number of canine bites were justified and within policy, the assessment did raise some questions concerning on-lead canine bites and warning announcements related to canine deployment. Further, issues were raised concerning the shifts and squads involved in canine bite incidents. The OIM also raised several concerns in their April 2003 quarterly report.²⁴

In response to these concerns, the Commander of the Special Operations Division began to institute changes within the Canine Unit. MPD also submitted a revised version of the approved *Canine Teams General Order* to the Department of Justice for review on June 4, 2003. DOJ's primary concerns were with canine bites that were occurring while canines were "on-lead" and bites that were occurring without a warning being given. MPD agreed with these concerns and revised the *Canine Teams General Order* to address these issues. MPD's primary focus in revising the general order was to provide a more comprehensive definition for Handler-Controlled Alert Methodology (HCAM), the canine training methodology employed by MPD. MPD feels that the revised general order, along with the training enhancements²⁵ instituted by the Canine Unit will address the concerns that have been raised.

DOJ provided comments on the revised order on July 25, 2003. In their July 25, 2003 letter, DOJ also promised to provide specific recommended policy revisions that DOJ believed to be consistent with the Memorandum of Agreement requirements and the parties' understanding of the Agreement. On September 30, 2003, DOJ provided the policy recommendations to further guide MPD's revisions of the *Canine Teams General Order*. On December 31, 2003, MPD submitted a revised order as well as specific responses to DOJ's policy recommendations for MPD's Canine Program. On March 31, 2004 DOJ provided a response to MPD's December submission. MPD provided a response to DOJ on June 26, 2004 that attempted to address all of the remaining concerns with the revised order. On September 17, 2004 the Department of Justice contacted MPD with two final requests for the general order. MPD accommodated DOJ's requests and submitted a final version of the order to DOJ for approval on

²⁴ Fourth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department, April 29, 2003.

²⁵ See "Transition Point" and "Decision Point" discussion, *Metropolitan Police Department and U.S. Department of Justice Memorandum of Agreement Progress Report*, July 10, 2003, p.14

September 24, 2004. MPD appreciates DOJ's continued efforts in this area. DOJ has been very responsive to MPD on this issue and has devoted a great deal of their resources to working with us on revisions to the order over the past year.

In addition to the general order revisions described above, MPD also submitted its comprehensive *Canine Lesson Plan and Training Curriculum* to DOJ on October 4, 2002 (MOA Paragraph 145). A *Canine Operations Manual* was also developed (MOA Paragraph 147). A draft of the manual, which institutionalizes almost all MPD canine issues into one document, was completed and submitted to DOJ on November 27, 2002. DOJ provided comments on both the training curriculum and the manual on September 30, 2003. In their comments, DOJ stated that, "The materials which MPD submitted will likely need to be substantially revised and expanded upon once DOJ and MPD reach agreement about how this methodology is going to be implemented at MPD in compliance with the MOA." MPD has delayed making revisions to the Manual and the Lesson Plan while we have been working with DOJ on finalizing revisions to the *Canine Teams General Order*. Given the progress made on the order during this quarter, MPD hopes to receive final approval on the order shortly, and will revise the Manual and Lesson Plan accordingly.

MPD's Canine Unit continues to be committed to ensuring that their policies and practices adhere to the requirements and to the spirit of MOA. MPD will continue to work with DOJ during the next quarter to finalize the *Canine Teams General Order* as well as the *Canine Operations Manual* and *Canine Lesson Plan and Training Curriculum*.

Training

Training and education are key aspects of the Metropolitan Police Department's use of force management. Accordingly, the Department's Maurice T. Turner Institute of Police Science is tasked with the responsibility to train members of the Department on the reengineered MPD policies. IPS continued its efforts this quarter regarding compliance with the MOA. A summary of those efforts appears below.

Lesson Plans

The MOA provides for DOJ approval over MPD's use of force curriculum. Pursuant to MOA Paragraph 119 and 122, MPD originally submitted the eleven lesson plans that comprised its use of force curriculum to DOJ on July 24, 2002. The status of those lesson plans is outlined in Table 2 below. During this quarter, MPD submitted all of its outstanding use of force lesson plans to DOJ for review at the end of July. Specifically, MPD submitted the following lesson plans:

- OC Spray Lesson Plan
- Officer Street Survival Lesson Plan
- Pistol Qualification
- Use of Force Continuum (with Manual)
- Verbal Judo

The lesson plans incorporated comments from DOJ's most recent correspondence. At the end of the quarter, DOJ provided comments on the lesson plans including their final approval of the OC Spray Lesson Plan. MPD is currently reviewing DOJ's comments on both the Officer Street Survival Lesson Plan and on the Use of Force Continuum Lesson Plan.

Table 2: MPD Use of Force Curriculum Summary	
ASP Tactical Baton Training Program	Approved by DOJ (09-30-03)
Close Quarter Combat	Approved by DOJ (09-30-03)
Controlled F.O.R.C.E.	Approved by DOJ (09-30-03)
Ground Fighting	Approved by DOJ (09-30-03)
Handcuffing	Approved by DOJ (09-30-03)
Krav/Maga	Approved by DOJ (09-30-03)
OC Spray	Approved by DOJ (09-30-04)
Officer Street Survival	Pending MPD (09-30-04)
Pistol Qualification	Pending MPD (09-24-04)
Use of Force Continuum (with Manual) ²⁶	Pending MPD (09-30-04)
Verbal Judo	Approved by DOJ (09-24-04)

In addition to the use of force curriculum, IPS completed development of sixteen lesson plans in September 2002 to demonstrate compliance with MOA paragraphs 84, 98, and 129 that deal with training supervisors and investigators. The lesson plans also served as the curriculum for fiscal year 2003 Annual In-Service Training. Table 3 summarizes the lesson plans that were created to comply with MOA paragraphs 84, 98, and 129 as well as the current status of each lesson plan. During this quarter, MPD submitted the following 6 lesson plans to DOJ:

- Arrest, Custody, and Restraint Procedures Lesson Plan
- Interview and Interrogation Lesson Plan
- Cultural Diversity and Sensitivity Awareness Lesson Plan
- Use of Force Continuum (with Manual) Lesson Plan
- Use of Force Incident Report Lesson Plan
- Use of Force Review Board Lesson Plan

²⁶ It should be noted that this lesson plan was also submitted as one of the sixteen lesson plans that comprised the curriculum for fiscal year 2003 Annual In-Service Training.

Table 3: MOA 84, 98, and 129 Lesson Plans Status	
Administrative Misconduct Investigation Policy & Procedures using the Preponderance of Evidence Standard	Pending approval of Chain of Command Misconduct Investigations General Order and Chain of Command Investigations Manual
Arrest, Custody, and Restraint Procedures	Approved by DOJ (09-30-04)
Bias-related Hate Crimes	Approved by DOJ (05-16-03)
Canine Policies and Procedures	Pending approval of Canine Teams General Order
Command Accountability	Approved by DOJ (11-25-02)
Communication and Interpersonal Relationship Skills	Approved by DOJ (11-25-02)
Crime Scene Preservation	Approved by DOJ (05-16-03)
Cultural Diversity and Sensitivity Awareness	Pending MPD (09-30-04)
Defensive Tactics	Approved by DOJ (05-16-03)
Ethics, Integrity, and Professionalism	Approved by DOJ (11-25-02)
Interview and Interrogation	Pending MPD (09-30-04)
Theories of Motivation and Leadership	Approved by DOJ (11-25-02)
Use of Force and Use of Force Continuum (with Manual) ²⁷	Pending MPD (09-30-04)
Use of Force Incident Report Form	Pending approval of revised UFIR.
Use of Force Review Board	Approved by DOJ (09-30-04)
Verbal Judo Recertification	Approved by DOJ (11-25-02)

In addition to the OC Spray Lesson Plan, three additional lesson plans that were submitted this quarter were subsequently approved by DOJ:

- UFRB Lesson Plan
- Verbal Judo Lesson Plan
- Arrest and Custody Lesson Plan

MPD is pleased to have received approval on these lesson plans and will continue to review DOJ's most recent comments on our other outstanding lesson plans.

Field Training Officer Protocol

²⁷ It should be noted that this lesson plan was also submitted as one of the eleven lesson plans that comprised the use of force curriculum originally submitted to DOJ July 24, 2002 .

The Metropolitan Police Department submitted a draft *Enhanced Field Training Officer Program Protocol* to DOJ on December 6, 2002, pursuant to MOA paragraph 121f. The MOA requires that,

*“MPD shall continue its Field Training program. Within 120 days of the effective date of this Agreement, MPD shall develop a protocol, subject to approval by DOJ, to enhance the Field Training program. The protocol shall address the criteria and method for selecting Field Trainers, the training provided to Field Trainers to perform their duties, the length of time that probationary officers spend in the program, the assignment of probationary officers to Field Trainers, the substance of the training provided by the Field Trainers, and the evaluation of probationary officer performance by Field Trainers.”*²⁸

DOJ provided comments on MPD's submission on September 30, 2003. MPD has experienced delays over the past year in submitting a revised protocol to DOJ. During this time, the Independent Monitor has focused their attention on this issue and has encouraged MPD to submit revisions as soon as possible. During this quarter, two of OIM's police practice experts, Captain Ron Davis of the Oakland Police Department and Mr. Dennis Nowicki (retired Chief of Police, Charlotte Mecklenburg Police Department) met with MPD's Assistant Chief of Human Services as well as IPS staff members to discuss these delays. One of the results of the meeting was MPD implementing a number of immediate reforms to the FTO program. Specifically, the Director of IPS has developed several program enhancements designed to improve coordination and collaboration between IPS and the members that serve as Master Patrol Officers (MPO)²⁹ / Field Training Officers. The enhancements include:

- Including MPOs/FTOs in the development of Daily Roll Call Training.
- Including MPOs/FTOs in the development and implementation of the 2005 In-Service Program.
- Offering Enhanced Instructor Training to MPOs/FTOs.
- Allowing MPOs/FTOs to serve as adjunct IPS faculty.
- Providing limited 1st Line Supervisor Training to MPOs/FTOs.
- Exploring the implementation of the A.D.O.R.E. (Automated, Daily, Observation Reports & Evaluation) software program for the citywide monitoring of field training activity.

In addition to the changes listed above, MPD also finalized their revisions and enhancements to the FTO Protocol during this quarter and it was submitted to DOJ on September 27, 2004.

²⁸ MOA paragraph 121f

²⁹ MPD's Master Patrol Officers serve as primary Field Training Officers for the Department.

Other IPS Memorandum of Agreement Activities

On December 31, 2003 MPD submitted the SemiAnnual Use of Force Curriculum Review prepared by the Curriculum Development Specialist at IPS. These reviews are required by MOA Paragraph 119 to be submitted to both the Department of Justice and the Independent Monitor. On March 30, 2004, DOJ provided comments on MPD's most recent submission. DOJ expressed some concerns regarding the format of the reports, and requested that the Independent Monitor review MPD's semi-annual reviews in an upcoming quarterly report. Another semi-annual review was due to DOJ on June 30, 2004. However, MPD had concerns with the report and requested a delay in submitting the report to DOJ. The CMT and IPS staff worked on revising the report to ensure it addressed DOJ's concerns as outlined in their March 30, 2004 letter, and submitted the final report on July 30, 2004.

The review outlined some of the efforts of the IPS Curriculum Development Specialist in selecting the instructor development programs at the Maryland Police Correctional Training Commission as a professional development benchmark for IPS staff as well as the implementation of two quality control measures: *The Instructor Evaluation Form* and the *Quality and Content Feedback Sheet*. The review also discussed the revamping of the Pistol Re-Certification Lesson Plan and also provided a review of each of the ten other lesson plans that comprise MPD's use of force curriculum.

On September 24, 2004, DOJ provided comments on MPD's most recent review. In their letter, DOJ wrote, "We are pleased to note that the July 30, 2004 compliance memo is a significant improvement over the last document, and we commend MPD on the obvious effort that went into preparing this version."³⁰

As previously reported, MPD IPS representatives have been working with the Office of Citizen Complaint Review in developing training for the OCCR investigators as well as specialized training on use of force for members of the Citizen Complaint Review Board and for OCCR complaint examiners. MOA paragraph 96 reads, in part,

"...OCCR investigative staff shall receive training and re-training in MPD policies and procedures, including, but not limited to, use of force and use of force reporting, canine deployment, transporting individuals in custody, restraints, arrests, report writing; investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; cultural sensitivity; ethics; integrity; and professionalism."

The first portion of training for OCCR investigators was completed during the last reporting period. MPD provided a three-day block of training on May 18 through May

³⁰ See Letter from Tammie M. Gregg to Captain Matthew Klein re: "Semi Annual Review of Use of Force Curriculum, MOA Paragraphs 119, 122, and 142," September 24, 2004, p.3.

20, 2004, to OCCR investigators on MPD's use of force policy, the history and organization of MPD, administrative investigations, interviews and interrogations, and ethics and diversity. OCCR reported that they found the training very useful.

MPD provided the second three-day block of training to OCCR investigators in July. The topics for this block of training included the D.C. Municipal Regulations and MPD's policies regarding contacts, stops, and frisks, establishing probable cause, making arrests, searches and seizures, citation release, and the handling of juveniles. OCCR's Executive Director commented favorably on the training and said that, "the training was very valuable for our staff because it was tailored for and given to only our staff, and [MPD] instructors were very accommodating in covering the topics of most interest to us and in addressing all of our questions."

OCCR's Executive Director commented favorably on the training provided by MPD and said that, "the instructors were very accommodating in covering the topics of most interest to us and in addressing all of our questions."

The IPS staff worked very hard during this quarter in revising lesson plans, preparing the *Semi-Annual Use of Force Curriculum Review*, and revising the *FTO Protocol*. IPS continues to work toward ensuring full compliance with the training requirements in the MOA.

Personnel Performance Management System

The Metropolitan Police Department and the District of Columbia have committed to develop and fully implement the Personnel Performance Management System, the early intervention system required by the MOA. PPMS will be,

*"a computerized relational database for maintaining, integrating, and retrieving data necessary for supervision and management of the Police Department and its personnel."*³¹

PPMS will be used regularly and affirmatively by the Metropolitan Police Department to promote civil rights integrity and best professional police practices.

As previously reported, MPD has experienced significant delays with the implementation of PPMS. MPD acknowledged that it had not met the original PPMS timetables set forth in the MOA, and Chief Ramsey was not satisfied with the progress made on the project. He recognized that the Department's efforts in this area needed to be enhanced.

³¹ MOA Paragraph 106

Accordingly, Chief Ramsey reorganized the MPD Information Technology Division (MPD-IT), and appointed a new Chief Information Officer (CIO) who reports directly to him. In turn, the CIO appointed a Director for the PPMS project to ensure that the PPMS program is treated as a priority. Accordingly, MPD, DOJ and the City were able to reach agreement on September 30, 2003 to a second modification to the MOA that provided revised deadlines for all PPMS-related MOA deliverables.³²

In accordance with MOA Paragraph 114b, MPD selected IBM and CRISNet Incorporated to develop PPMS. IBM/CRISNet began work with the Department in September 2003. MPD and IBM/CRISNet worked very closely during late 2003 and early 2004 to finalize the development of PPMS system requirements. However, as previously reported, MPD experienced a significant setback in the area of funding for PPMS. MPD had to temporarily interrupt work with IBM/CRISNet on March 31, 2004 due to a lack of funding. Accordingly, since March 2004, MPD has been directing its efforts toward securing the necessary funding for restarting work with IBM/CRISNet on the PPMS Program.

MPD notified DOJ of the funding setback on March 8, 2004 and has kept both the Department of Justice and the Office of the Independent Monitor updated on our progress with securing the necessary additional funding. As previously reported, MPD submitted new deadlines to DOJ on June 18, 2004 for the PPMS program. In addition to the proposed development schedule, MPD also provided a listing of assumptions that guided the development of the revised project schedule. MPD's June 18 submission contained MPD's initial proposal for a third modification to the MOA with new deadlines for the development of PPMS.

During this past quarter, MPD has been engaged in discussions with DOJ regarding these new deadlines. Specifically, MPD responded to several sets of questions and requests from DOJ that emanated from our June 18, 2004 submission. Most recently, DOJ requested that MPD submit some additional information to aid in negotiating a third modification including:

- "interim" dates for the modification to provide for milestones prior to the beta-test of PPMS
- a glossary of technical terms contained in the proposed modification
- a revised schedule for development of PPMS
- a revised listing of assumptions
- a revised MPD organizational chart

³² See "Joint Modification No. 2 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Police Department, September 30, 2002"

MPD provided these documents to DOJ for review on September 23, 2004. On September 30, 2004, DOJ contacted Chief Ramsey to express their disappointment that we were not able to complete a modification during this quarter. MPD shares that concern and remains committed to completing the modification and moving forward with the development of PPMS. While this work interruption has clearly impacted MPD's development of PPMS, both MPD and the City are working very hard to ensure that the impact of the interruption is minimized to the greatest extent possible.

Other PPMS Deliverables

In addition to our efforts with moving forward with a PPMS MOA modification, MPD also submitted additional deliverables to DOJ for review. On August 29, 2003, MPD submitted its plan for compliance with MOA paragraphs 107, 109, and 110. On September 30, 2003, DOJ provided suggestions for our plan regarding MOA paragraphs 107 and 109. On August 31, 2004 MPD provided DOJ with our "*Joint Application Development Report and Consolidated Fit Gap Analysis Document*" for review and approval. This document summarizes the JAD sessions that took place in the fall of 2003 and gives a comprehensive report of how MPD plans to ensure that PPMS is customized to ensure MOA compliance.

When we had submitted our original plans for compliance with MOA paragraphs 107 and 109, MPD had not yet selected a contractor for PPMS, and we were relying on the Request for Proposal (RFP) to guide our plans for compliance. However, since that time, a great deal of work has been done to further define how we intend PPMS to function. MPD feels this document best outlines how MPD plans for PPMS to comply with the MOA. A copy of the "*Joint Application Development Report and Consolidated Fit Gap Analysis Document*" is included in the Appendix of this report.

On September 30, 2004 MPD also provided DOJ with an update on our efforts with the development of the protocol for PPMS, required by MOA paragraph 111, 112, and 114c. MPD included a revised version of the protocol with the update that contained many of the revisions suggested by DOJ in their March 30, 2004 letter. However, given the funding issues surrounding PPMS, and because the PPMS Team has not been meeting on a weekly basis since the spring, we notified DOJ that we felt some of their discussions would require further, internal discussions. The PPMS Project Management Office plans to restart the team meetings in October.

On August 19, 2004, MPD submitted a revised version of our plan for compliance with MOA paragraph 117. MOA paragraph reads,

"OPR shall continue to be responsible for developing, implementing, and coordinating MPD-wide risk assessments. OPR shall be responsible for the operation of PPMS, and for ensuring that information is entered into and maintained in PPMS in accordance with

this Agreement. OPR further shall provide assistance to managers and supervisors who are using PPMS to perform the tasks required hereunder and in the protocol adopted pursuant hereto, and shall be responsible for ensuring that appropriate standardized reports and queries are programmed to provide the information necessary to perform these tasks.”

MPD had submitted our original plan for compliance on October 17, 2003. DOJ provided their comments on December 31, 2003. MPD's August submission attempted to address DOJ's recommendations for the plan, including specifying the types of incidents that would be monitored as part of the risk assessments. DOJ provided additional comments on the plan on September 22, 2004. MPD is currently reviewing DOJ's comments.

MPD is very concerned with the setbacks experienced in the development of PPMS. MPD plans to keep both the Department of Justice and the Office of the Independent Monitor apprised of our efforts in restarting the program and will advise them of any future developments. MPD remains committed to implementing PPMS and will continue to treat the implementation of the system as a priority for the Department.

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Performance Evaluation System

The MOA requires that MPD enhance its Personnel Evaluation System. Paragraph 118 of the MOA reads, in part,

“...MPD shall prepare for the review and approval of DOJ, and thereafter implement, a plan to enhance its new Performance Evaluation System to ensure that annual personnel performance evaluations are prepared for all MPD sworn employees that accurately reflect the quality of each sworn employee's performance, including, but not limited to:

- a. civil rights integrity and the employee's community policing efforts;*
- b. adherence to law, including but not limited to performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the Civil Rights laws of the United States;*
- c. with respect to managers, and supervisors, their performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force; arrests, booking, and performance bearing upon honesty and integrity.”*

The Metropolitan Police Department submitted a draft *Enhanced Performance Evaluation System Protocol* to DOJ on November 8, 2002. DOJ provided comments on

the protocol on May 2, 2003. MPD provided a status report on those comments on September 30, 2003. On October 6, 2003 DOJ provided comments on MPD's update. On March 5, 2004, MPD provided an additional update regarding its efforts in revising the Performance Evaluation System that outlined the work done by MPD to date. The update also identified the primary remaining tasks as being the staffing of the *Performance Management System (PMS) for Sworn Members Serving in the Ranks/Positions of Officer, Agent, and Sergeant General Order*, and the completion of the revised manuals for officer and sergeant performance evaluation standards.

MPD submitted the final, revised materials to DOJ for review on July 1, 2004. The following materials were included with the submission:

- Revised Performance Management System, Officer Performance Standards
- Revised Performance Management System, Sergeant Performance Standards
- Revised Performance Management System, Investigative Personnel³³ Performance Standards
- General Order PER 201.20, Performance Management System (PMS) for Sworn Members Serving in the Ranks/Positions of Officer, Agent, and Sergeant

The standards that were submitted have been revised to reflect the results of the job analyses for Officers and Sergeants recently conducted by Systems Design Group, and to include the recommendations made by the Department of Justice in their May 2, 2003 letter. Among the changes made to the most recent submission are:

- Separate benchmarking standards related to the Memorandum of Agreement, specifically Use of Force have been created in the Officer and Sergeant standards
- With regard to the Sergeant performance standards, compliance with and enforcement of MPD policies is specifically stated in the standard.
- The behavioral anchors for Sergeants have been re-written to include the supervisory role of managing compliance with the Department's policies and procedures, where appropriate.

On September 10, 2004, MPD contacted the Department of Justice to request that they expedite their review of our most recent submission. MPD performance evaluations for officers and sergeants operate under the "fiscal year" timeframe (October 1 – September 30). Accordingly, MPD wanted to implement the new standards and revised general order in time for the new rating period. DOJ agreed to do what they could to accommodate our request. On September 24, 2004 DOJ contacted MPD to request additional information to aid in their review. In part, they wanted to obtain some overview information regarding the City's "Performance Management Program" (PMP).

³³ Investigative personnel include agents, investigators, detectives grade two and detectives grade one

The PMP is the Citywide program designed to be an objective and developmental approach to assessing employee performance. The PMP provides a framework for supervisors and employees to communicate with each other regarding work expectations, job performance, and career development and to recognize employee accomplishments and improve employee performance through training. MPD uses the Performance Management Program for evaluating sworn members the rank of lieutenant or above. MPD provided the requested information regarding the PMP on September 29, 2004. MPD looks forward to receiving DOJ's comments on our latest submission and we appreciate their accommodating our request for an expedited review.

Department of Justice

Since the creation of the Compliance Monitoring Team in February 2002, there has been significant, sustained interaction between the Metropolitan Police Department and the Department of Justice. Notwithstanding meetings and formal correspondence, there have been numerous other contacts between the two agencies in order to continue the established dialogue.

During this reporting period, representatives from MPD and DOJ met at the monthly "all-hands" meeting held at the Office of the Independent Monitor, as well as monthly DOJ and CMT Meetings that are held on the third Thursday of every month. DOJ also provided comments on MPD work products during the quarter consistent with MOA paragraph 178.³⁴ DOJ provided comments on a number of MPD deliverables during this reporting period including:

- Canine Teams General Order (MOA paragraphs 44-46)
- Use of Force Incident Report (UFIR) and Specialized Mission Unit Use of Force Report (SMUFIR) (MOA paragraphs 53, 150-158)
- Chain of Command Investigation Templates (MOA paragraph 83)
- FIT Training (MOA paragraph 84)
- IPS and Use of Force Lesson Plans (MOA paragraph 84, 122, and 129)
- MOA Paragraph 117 Plan for Compliance
- Semi-Annual Review of Use of Force Curriculum (MOA Paragraphs 119, 122, and 142)

³⁴ MOA paragraph 178 reads, "DOJ shall review documents and information provided by MPD and the Monitor and shall provide its analysis and comments to the City, MPD and the Monitor at appropriate times and in an appropriate manner, consistent with the purpose of this Agreement to promote cooperative efforts."

DOJ representatives also provided a great deal of time and resources to discussions involving the proposed deadlines for the development of PPMS and the modification to the MOA. We appreciate DOJ's continued assistance with these items.

The level of cooperation between the MPD and DOJ remains high. MPD is extremely pleased with the relationship that exists with the U.S. Department of Justice. DOJ's MPD team is continually professional, responsive, and helpful. The Metropolitan Police Department looks forward to continuing its partnership with the Department of Justice to jointly complete the requirements of this Memorandum of Agreement.

F r a t e r n a l O r d e r o f P o l i c e

The Fraternal Order of Police is the Labor Union for all police officers, technicians, detectives, and sergeants on the Metropolitan Police Department. The Metropolitan Police Department recognizes the importance and value of including the FOP in Memorandum of Agreement endeavors.

However, the relationship between MPD and the FOP, at times, has been challenging. The FOP had initially declined to participate in MOA-related endeavors, and has previously filed an Unfair Labor Practice (ULP) Complaint against the Metropolitan Police Department with the District of Columbia Public Employees Relations Board (PERB). The Labor Union cited alleged changes in terms and conditions of employment relating to the Memorandum of Agreement as the reason for the filing.

As previously reported, the PERB stated that the filing of the Unfair Labor Practice charge fell outside of the 120-day window established by PERB Rule 520.4 for filing such charges. The Hearing Examiner did not address the merits of the case. Exceptions were filed by the union and opposed by the Department. A decision from the PERB will be forthcoming.

However, FOP representatives have continued their involvement with various aspects of the MOA. The FOP has continued its practice of providing comments on draft general orders and policies prior to their submission to DOJ, most recently with the *MPD and OCCR Memorandum of Understanding*. MPD continues to find the input provided by the FOP in these areas to be very useful.

During this quarter, the FOP and MPD continued their negotiations regarding compensation and working conditions. Article 12 of the Collective Bargaining Agreement, which specifically relates to disciplinary procedures, is currently one of the items being negotiated. Accordingly, MPD notified DOJ that the *Disciplinary Process General Order* required by MOA paragraph 105 cannot be finalized by MPD until those

negotiations are complete. We plan to keep both the OIM and DOJ updated on our progress with this issue.

MPD believes that the inclusion of the FOP in discussion of MOA issues as well as keeping them informed on MPD's progress has been useful to both parties. MPD hopes to continue this process as we move forward with the MOA.

Independent Monitor

The Memorandum of Agreement requires that the Metropolitan Police Department and the Department of Justice jointly select an Independent Monitor to review, report, and assist on matters related to the Agreement's implementation.³⁵ On March 28, 2002, the Metropolitan Police Department and the law firm of Fried, Frank, Harris, Shriver & Jacobson jointly announced that Michael R. Bromwich had been selected as the Independent Monitor. Mr. Bromwich is a partner at the firm, and is head of the internal investigations, compliance and monitoring practice group there.

The Independent Monitor completes and disseminates quarterly progress reports regarding MPD's Memorandum of Agreement compliance efforts. The next report is scheduled to be completed later this month. Previous reports are available at the Independent Monitor's website at www.policemonitor.org.

The Independent Monitor continues to host monthly "all-hands" meetings in which all MOA stakeholders meet including the Chief of Police, the Department of Justice, the Office of Citizen Complaint Review, and the Compliance Monitoring Team. These meetings occur on the first Monday of each month.

Additionally, the OIM has continued its practice of sending its police practice experts to the Department in order to review various aspects of MOA compliance. The Compliance Monitoring Team has been assisting the OIM by facilitating document and meeting requests throughout the Department. During this reporting period, members of the OIM team engaged in the following monitoring activities:

- Completed review of fifth sample of use of force and misconduct investigations
- Continued reviewing all completed FIT preliminary and final use of force investigations
- Reviewed 2004 canine deployments and bite incidents

³⁵ MOA Paragraph 161

- Reviewed Field Training Officer (FTO) program and probationary police officer files
- Monitored in service training
- Monitored Curriculum Development Specialist (CDS) function
- Monitored community outreach meetings at various MPD district stations
- Observed Use of Force Review Board (UFRB) hearings
- Continued review of OCCR investigator training
- Continued review of timeliness of OCCR investigations
- Reviewed OC spray cases

During this quarter, the OIM again spent a substantial amount of time reviewing MPD's Field Training Officer Program. The OIM has expressed their ongoing concern with the delay experienced by MPD in implementing reforms to the current FTO program, most recently in their ninth quarterly report. Two of OIM's police practice experts, Captain Ron Davis of the Oakland Police Department and Mr. Dennis Nowicki (retired Chief of Police, Charlotte Mecklenburg Police Department) met with MPD's Assistant Chief in charge of Human Services as well as members of the training academy to discuss these delays. MPD found this meeting to be very beneficial and it allowed for the exchange of ideas. One of the results of the meeting was MPD implementing a number of immediate reforms to the FTO program designed to improve coordination and collaboration between IPS and the members who currently serve as FTO's. We appreciate the OIM taking time to meet with us on this topic.

As discussed earlier, the OIM continued its efforts in defining how they will measure "substantial compliance" for the MOA. The MOA states that,

*"The Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have substantially complied with each of the provisions of this Agreement and maintained a substantial compliance for at least two years."*³⁶

The OIM, DOJ, and MPD have agreed on the importance of balancing both quantitative and qualitative measures for substantial compliance. MPD remains pleased with the efforts of the OIM on defining "substantial compliance." MPD believes we are creating measures that are realistic, theoretically sound, and consistent with the understanding of the parties when they entered into the Agreement. MPD feels that the parties have

³⁶ MOA Paragraph 182

continued to make progress on this important endeavor and we look forward to continuing to work with DOJ and the OIM on this very important issue.

Conclusion

The Metropolitan Police Department is pleased with our progress during this quarter. The Department remains committed to completing the balance of reforms contained in the Memorandum of Agreement.

During this quarter, MPD submitted a number of additional deliverables for DOJ review including the:

- *MPD and OCCR Memorandum of Understanding* (MOA paragraph 85),
- *Canine Teams General Order* (MOA paragraph 44-46),
- *Field Training Officer Protocol* (MOA paragraph 121f)

However, MPD remains very concerned with the delays experienced in fully funding PPMS. MPD is devoting significant time and attention to ensure that the PPMS program is restarted as soon as budgetary funds become available, and continues to treat PPMS as a priority for the Department. MPD looks forward to comments on the proposed dates for a third modification to the MOA that were submitted to DOJ on September 23, 2004. While we regret that we were unable to complete a modification by the end of the quarter, we are confident that we will be able to reach agreement with DOJ during the next quarter. MPD is also committed to submitting remaining MOA deliverables to DOJ including the *Citizen Complaint General Order*, and *Disciplinary Process General Order*.

The Metropolitan Police Department remains committed to becoming fully compliant with the provisions of the MOA and becoming the national model on how to uphold the rule of law while using force only when and to the extent necessary.

Attachments

- *MPD-DOJ Memorandum of Agreement Completion Matrix Report*, September 30, 2004.
- Letter from Maureen O'Connell to Tammie Gregg regarding, "*MOA Paragraph 105, Disciplinary Process*," July 29, 2004.
- Email from Maureen O'Connell to Tammie Gregg, Lisa Graybill, and Sarah, Gerhart regarding, "*PPMS – MOA Modification III*," September 23, 2004. (Attachments included.)
- *Memorandum of Understanding Between the Office of Citizen Complaint Review and the Metropolitan Police Department*, September 24, 2004.
- Letter from Terrence Ryan to George Valentine and Phyllis Dailey regarding MOA paragraph 75, September 7, 2004.
- "*Joint Application Development Report and Consolidated Fit Gap Analysis Document*," January 6, 2004.